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## THE HONORABLE LONNY R. SUKO

## Attorneys for Defendant Echo Bay Minerals Company

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ARMANELLA J. WHITE.

Plaintiff,

1

## ECHO BAY MINERALS COMPANY.

Defendant.

No. CV-10-047-LRS

## STIPULATED PROTECTIVE ORDER

The Court hereby orders pursuant to Federal Rule of Civil Procedure 26(c) that the parties' disclosure and exchange of Confidential information, as defined herein, shall be governed by the terms of this Protective Order, and this Protective Order is hereby approved and entered by the Court.

## **A. Scope of Protective Order**

1. This Protective Order shall govern the use and disclosure of certain sensitive and confidential information designated in good faith by a party to this litigation as being "Confidential" as set forth below, and which is

**PROTECTIVE ORDER (No. CV-10-00047-LRS) – 1**

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1 contained in (a) any documents, written discovery responses, or tangible  
2 evidence produced in this litigation by means of discovery and (b) any  
3 transcripts of depositions taken in this action. This Protective Order establishes  
4 a procedure for the expeditious handling of such Confidential information; it  
5 shall not be construed as an agreement or as creating any presumption on the  
6 confidentiality of any document,

7       2. The attorneys of record, and all others to whom any such  
8 designated Confidential information and material is disclosed, including  
9 plaintiff Armanella White, shall maintain such designated Confidential  
10 information and material in strict confidence, shall not disclose such designated  
11 Confidential information and material except in accordance with this Protective  
12 Order, and shall use such designated Confidential information and material  
13 solely for this litigation. All produced Confidential information and material  
14 shall be carefully maintained in secure facilities (such as law firm offices), and  
15 access to such Confidential information and material shall be permitted only to  
16 persons properly having access thereto under the terms of this Protective Order.

17       **B. Confidential Information**

18       1. Any party claiming that documents, written discovery responses,  
19 or tangible evidence constitute or include Confidential information or material  
20 shall mark those portions of the material considered in good faith to be  
21 confidential (in such manner as will not interfere with the legibility thereof)  
22 with the legend: "Confidential." Deposition testimony may be designated as  
23 "Confidential" by invoking this Protective Order on the record with respect to  
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25       **PROTECTIVE ORDER (No. CV-10-**  
26       **00047-LRS) – 2**

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1 specific designated testimony, or by using the procedure described in  
 2 Paragraph 3 of this section.  
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4       2. By designating materials as Confidential, the parties and their  
 5 counsel represent that they have a good faith belief that the materials so  
 6 designated contain sensitive and confidential financial information, personal or  
 7 medical information, trade secrets, or confidential insurance policies or other  
 8 confidential insurance information entitled to a protective order under Federal  
 9 Rule of Civil Procedure 26(c).  
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11       3. If depositions are conducted which involve Confidential  
 12 information, each party shall have until ten (10) days after receipt of the  
 13 deposition transcript within which to inform the other parties of the portions of  
 14 the transcript (by specific page and line reference) to be designated  
 15 Confidential. Prior to the expiration of the ten (10) day period, the entire  
 16 deposition transcript shall be treated as Confidential information.  
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18       4. Confidential information or material (including any copies  
 19 thereof, notes made therefrom, and the information contained therein) may be  
 20 disclosed only to the following persons:  
 21

22           4.1 Authors, originators, or original recipients of the  
 23 Confidential information or material.  
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25           4.2 The parties to this action.  
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27           4.3 Employees, officers and directors of a party to this action,  
 28 to the extent that such officers and directors have a need to know the  
 29 Confidential information for the conduct of this litigation.  
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1           4.4 The attorneys of record in this litigation and employees or  
 2 contract personnel retained by such attorneys' offices (such as secretaries, legal  
 3 assistants, and document copying, coding, or imaging services) to whom it is  
 4 necessary to disclose such information or material in furtherance of the  
 5 prosecution or defense of this action, any insurance representative to whom it  
 6 is necessary to disclose such information or material, and any mediator selected  
 7 to mediate this matter,

8           4.5 The Court and its personnel, as necessary in support of  
 9 motions, pleadings and other court papers and proceedings.

10           4.6 Court reporters and their assistants, to the extent reasonably  
 11 necessary for reporting of depositions and hearings.

12           4.7 Non-party witnesses in a deposition, but only if consent is  
 13 obtained from opposing counsel or the party proposing to disclose the material  
 14 first provides the material to opposing counsel prior to providing Confidential  
 15 information to the witness at the deposition. When Confidential information is  
 16 shown to a non-party witness in a deposition, the deponent and the deponent's  
 17 counsel shall be provided a copy of this Protective Order and Order and shall  
 18 acknowledge on the record that he or she has received a copy of this Protective  
 19 Order and Order and signed an Protective Order (in substantially the form  
 20 presented in Exhibit A hereto) evidencing the intent to be bound by its terms.

21           4.8 Experts retained by an attorney to whom disclosure may be  
 22 made pursuant to Paragraph 4.4, but only to the extent that the expert, prior to  
 23 receiving any Confidential information or material, has received a copy of this  
 24 Protective Order and has signed an Agreement (in substantially the form  
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1 presented in Exhibit A hereto) evidencing his intent to be bound by its terms,  
 2 including his agreement not to divulge any Confidential information or  
 3 material to any other person, his agreement not to use any Confidential  
 4 information or material for any purpose other than this litigation, his consent to  
 5 the jurisdiction and contempt power of this Court with respect to the  
 6 enforcement of the order, and his agreement to return to the disclosing attorney  
 7 with twenty (20) days after termination of this litigation (a) all documents and  
 8 other material containing designated Confidential information and material  
 9 received by him and all copies thereof and (b) all reports, correspondence and  
 10 other tangible things in his possession or control which contain any  
 11 Confidential information, or material disclosed to such expert.  
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22       5. Nothing in this Protective Order shall be deemed to restrict  
 23 in any manner the use by any party of its own documents, information, or  
 24 materials.  
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27       **C. Other Provisions**

28       1. If any party believes that any document or information which is  
 29 claimed to be Confidential does not contain confidential material, it may  
 30 contest the applicability of this Protective Order to such information by  
 31 notifying the opposing party's counsel in writing and identifying the  
 32 information contested. The parties shall have seven (7) days after such notice  
 33 to meet and confer and attempt to resolve the issue. If the dispute is not  
 34 resolved within said period, the party seeking the protection shall have seven  
 35 (7) additional days in which to make a motion for the protection of such  
 36 document or information. The document or information that is subject to a  
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1 dispute as to whether it is in fact Confidential, shall, until further order of the  
2 Court, be treated as designated (Confidential) in accordance with the  
3 provisions of this Protective Order.  
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6 2. Any party may seek an order of the Court modifying this order,  
7 seek greater or lesser protection for any information or material sought to be  
8 discovered, or seek an order pursuant to Federal Rule of Civil Procedure 26(c)  
9 or other applicable rule or law that other Confidential information not be  
10 revealed.  
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13 3. Nothing in this Protective Order shall require any party to disclose  
14 any information or materials as to which it owes a third party a duty of  
15 confidentiality or nondisclosure, unless that third party consents to, or the  
16 Court orders, such disclosure. It shall be the obligation of the party seeking  
17 disclosure of such information or materials to obtain consent to disclosure from  
18 the third party to whom the duty of confidentiality or non-disclosure is owed.  
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21 4. The disclosure by the producing party of Confidential information  
22 or material, regardless of whether the information was so designated at the time  
23 of disclosure, shall not be deemed a waiver in whole or in part of a party's  
24 claim of confidentiality with respect to third parties, either as to the specific  
25 information disclosed or as to any other information relating thereto or on the  
26 same or related subject matter. Nothing in this Protective Order shall be  
27 deemed to waive any claim of privilege or of work product immunity.  
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30 5. If a party wishes to use Confidential information or material to  
31 support or oppose a motion, the following procedures shall apply. Counsel  
32 shall meet and confer before filing documents under seal. To the extent  
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1 possible, counsel shall submit, along with any document filed under seal, a  
2 stipulation and proposed order reciting the reasons for sealing the document.  
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4 *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006);  
5 *Foltz v. State Farm Mut. Auto. Inc. Co.*, 331 F.3d 1122 (9th Cir. 2003). If  
6 counsel cannot reach agreement, then a properly noted motion to seal must be  
7 filed *contemporaneously* with the sealed document. If the party wishing to  
8 submit the material is not the party designating the material as confidential, the  
9 party wishing to submit the material shall provide at least seven (7) days notice  
10 to the other party(ies), so that a motion to seal, if necessary, may be prepared  
11 and filed *at the same time* as the material is submitted under seal to the Court.  
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14 Counsel shall use the Case Management and Electronic Document Filing  
15 ("CM/ECF") system to present materials under seal; counsel shall not provide  
16 original sealed materials to chambers and shall not provide working copies to  
17 chambers unless the materials are voluminous and working copies would  
18 otherwise be required under Local Rule 5.1(a). In association with any  
19 stipulation or motion to seal, the parties shall bring to the Court's attention the  
20 requested disposition of the confidential documents in the event the stipulation  
21 or motion is denied. For example, a party may request that, in the event the  
22 stipulation or motion is denied, the documents containing confidential  
23 information be deleted from the docket rather than merely unsealed, together  
24 with leave to file a new motion or other paper that does not rely on the  
25 confidential material. Nothing in this Order or the above example shall be  
26 construed as an endorsement of any particular relief, nor shall it otherwise  
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1 constrain the Court's authority with respect to the handling of confidential  
2 documents or information.  
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4       With respect to Confidential Information or material to be used at trial,  
5 the Court ordinarily will treat trial exhibits and testimony as a matter of public  
6 record. The parties, however, shall meet and confer before the Pretrial  
7 Conference to attempt to reach an agreement about the confidentiality of  
8 information to be used at trial and a method for maintaining the confidentiality  
9 of such information. At the Pretrial Conference, the parties may present, by  
10 motion or stipulation, a proposed method for maintaining confidentiality.  
11 Nothing in this paragraph, however, shall be construed as constraining the  
12 Court's authority to treat trial exhibits and testimony as matters of public  
13 record.  
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15       6. To expedite the production of information, the parties may  
16 inadvertently produce documents that are privileged, including but not limited  
17 to documents protected by attorney-client privilege or work product doctrine.  
18 Inadvertent production of privileged documents shall not be deemed a waiver  
19 of any applicable privilege. Upon discovery that privileged documents have  
20 inadvertently been produced, the producing party shall promptly notify the  
21 other parties. Upon such notification, the parties shall treat the documents as  
22 privileged unless and until the Court has sustained a challenge to the assertion  
23 of privilege. If the parties do not agree that such documents are privileged, a  
24 motion asserting such a challenge must be filed within fourteen (14) days after  
25 a party receives notice of a claim of inadvertent production of privileged  
26 documents. If no such motion is filed, all parties shall, within fourteen (14)  
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1 days of receipt of notification of the inadvertent production, return to the  
2 producing party, or destroy, all copies of the privileged documents in their  
3 possession or in the possession of their counsel or any ether person under their  
4 control. Written confirmation of this return or destruction of documents shall  
5 be provided to the party asserting the privilege.  
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8 7. Within sixty (60) days after the termination of this litigation,  
9 counsel of record shall (a) destroy (or return) all tangible documents and other  
10 material containing designated Confidential information and material and  
11 copies thereof within such counsel's custody or control received from or by  
12 authorization of the producing party or its agents, and (b) serve upon the  
13 producing party a certification that this order has been fully complied with by  
14 such counsel unless there has been any noncompliance, in which event such  
15 counsel shall state fully in such certification the material facts and  
16 circumstances concerning any noncompliance.  
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19 8. The parties may at any time stipulate to a modification by the  
20 Court of this Protective Order as to any particular portion of the Confidential  
21 information or material, without affecting the continuing validity of this  
22 Protective Order and as to any other Confidential information or material.  
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1 DATED this 16th day of September, 2010.  
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7 *s/Lonny R. Suko*  
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12 UNITED STATES DISTRICT JUDGE  
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Presented By:

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By: *s/ Julie S. Lucht*  
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## EXHIBIT A

# **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

The undersigned, \_\_\_\_\_, hereby

acknowledges that he or she received a copy of the Protective Order entered in the matter of *Armanella J. White v. Echo Bat Minerals Company*, in United States District Court for the Eastern District of Washington, No. CV-10-00047-LRS, and has read and agrees to be bound by all of the provisions thereof. The undersigned agrees (i) not to divulge any Confidential information or material to any other person as designated and defined therein; (ii) not to use any such Confidential information or material for any purpose other than this litigation; (iii) to return to the disclosing attorney with twenty (20) days after termination of this litigation all documents and other material containing such designated Confidential information and material received by him and all copies thereof, and all reports, correspondence and other tangible things in his possession or control which contain any such Confidential information or material disclosed to him or her. In addition, the undersigned consents to the jurisdiction and contempt power of this Court with respect to the enforcement of the Stipulated Protective Order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**PROTECTIVE ORDER (No. CV-10-00047-J-RS) – 1**

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